

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

Mel Carnahan, Governor • Stephen M. Mahfood, Director


DIVISION OF ENVIRONMENTAL QUALITY

P.O. Box 176 Jefferson City, MO 65102-0176

MEMORANDUM

DATE: FEB 24 2000

TO: Air Pollution Control Program

FROM: Roger D. Randolph, Director
Air Pollution Control Program, DEQ 

SUBJECT: Operating Permit Requirements for Non-Major MACT Sources

The state operating permit rule uses the phrase "... are subject to a standard or other requirement under section 112 of the Act" as a criterion for applicability. The National Emission Standards for Hazardous Air Pollutants (NESHAPs), which include the Maximum Achievable Control Technology (MACT) standards in 40 CFR Part 63, are promulgated under section 112 of the Clean Air Act (and Amendments). The purpose of this memorandum is to clarify interface issues between 40 CFR Part 63 (hereinafter referred to as "MACT standards") and Missouri State Rule 10 CSR 10-6.065, *Operating Permits*.

Major sources of HAPs (>10 tpy single/25 tpy combination of HAPs) are required to get Part 70 permits. Questions have arisen on the applicability of the state operating permit rule to non-major sources¹ of HAPs that fall under certain source categories for which MACT standards have been promulgated. Several facts are pertinent to this question of applicability of the state operating permit rule, including:

- Many MACT standards apply only to major sources of HAPs in the source category specified. However, some standards have requirements for non-major sources in the source category specified;
- Certain non-major sources are able to document with recordkeeping and/or reporting that they are not subject to substantive requirements of the standard in question (see attached memo from Steve Hitte);
- EPA is allowing Title V permitting authorities to *defer*² some specific non-major sources from "Title V permitting requirements"; and,
- Some specific non-major sources have been *exempted*³ from "Title V permitting requirements" by EPA.

¹ For the purposes of this document, "non-major sources" refers to individual sources that are not major themselves and not located at a major source.

² The first deferral expired December 9, 1999, however, EPA is currently proceeding with a rulemaking to extend the deferral five years, until December 9, 2004.

³ EPA chose to *permanently* exempt some specific non-major sources from Title V permitting requirements.

The APCP will apply 10 CSR 10-6.065, "*Operating Permits*" to non-major HAP sources in the following manner:

- Non-major sources that are *deferred* from Title V permitting requirements are **required** to get a Basic State Operating Permit;
- Non-major sources that are *exempt* from Title V permitting requirements are **not required** to get a Basic State Operating Permit;
- Non-major sources that are *subject* to Title V permitting requirements are **required to get a Part 70 Operating Permit** and,
- Non-major sources that are subject only to a one-time or ongoing recordkeeping and/or reporting requirement to document their exemption from substantive requirements of the standard in question are **not required** to get a Basic State Operating Permit.

The following summarizes the state operating permit requirements for non-major sources referenced in 40 CFR Part 63, Subparts M, N, O, T, X and JJ:

- **Subpart M** (perchloroethylene dry cleaners): Non-major sources are *deferred* from Title V permitting requirements. Dry cleaners using less than 140 gallons of perchloroethylene per year are still considered subject to the standard - and thus their status is *deferred* - because they must still meet some of the more perfunctory work practices. Therefore, all non-major sources subject to this standard are required to apply for a Basic Operating Permit. There is also a General Operating Permit available through the APCP for these sources.
- **Subpart N** (chromium electroplaters/anodizers): Non-major sources are *deferred* from Title V permitting requirements, *except* for the following two categories which are *exempt*: (i) any decorative chromium electroplating operation or chromium anodizing operation that uses fume suppressants as an emission reduction technology; and (ii) any decorative chromium electroplating operation that uses a trivalent chromium bath that incorporates a wetting agent as a bath ingredient. Non-major deferred sources are required to apply for a Basic Operating Permit. Non-major exempt sources are not subject to the state operating permit rule.
- **Subpart O** (EtO sterilizers): *Sources(s) using 1 ton or more of ethylene oxide* (as defined in the subpart) are *subject* to Title V permitting requirements, but non-major sources in this category are *deferred* from Title V permitting requirements. Therefore, all non-major source(s) using 1 ton or more of ethylene oxide are required to apply for a Basic Operating Permit. Non-major sources using less than one ton are not subject to Title V permitting requirements and are not subject to substantive requirements (only recordkeeping requirements). Therefore, sources using less than one ton are not required to apply for an operating permit.
- **Subpart T** (degreasers): Non-major sources are *deferred* from Title V permitting requirements, *except* for batch cold solvent cleaners, which are *exempt*. Non-major deferred sources are required to apply for a Basic Operating Permit. Non-major exempt sources are not subject to the state operating permit rule.

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- **Subpart X** (secondary lead smelters): Non-major sources are *deferred* from Title V permitting requirements. Therefore, all non-major sources subject to Subpart X are required to apply for a Basic Operating Permit.
- **Subpart JJ** (wood furniture manufacturers): Substantive requirements of this standard apply to major sources only. Sources may demonstrate that they are non-major sources or incidental wood furniture manufacturers by meeting certain recordkeeping requirements stated in the standard. Sources that can demonstrate non-major status are not required to apply for an operating permit. Incidental wood furniture manufacturers are, by definition, major sources for other reasons (i.e., the *wood furniture manufacturing* portion of their business does not make them major). Therefore, as major sources, IWFMs must apply for a **Part 70 operating permit**.

The preceding guidelines do not affect a source's responsibility to apply for and obtain a Basic, Intermediate or Part 70 Operating Permit based on other criteria contained in 10 CSR 10-6.065.

LC:kl

Attachment

April 19, 1999

MEMORANDUM

SUBJECT: Title V Applicability of One-time "Reporting" Provisions for Nonmajor Sources

FROM: Steven J. Hitte, Group Leader /s/
Operating Permits Group (MD-12)

TO: Gerald C. Potamis, P.E., Manager
Air Permit Program Unit, Region I

This memorandum is in reply to your November 10, 1997 letter where you asked us to confirm your office's view that an individual non-major source subject to a part 60 or 61 standard or an individual area source subject to a part 63 standard is not required to obtain a title V permit, provided that the source meets the two conditions shown below. Please appreciate the delay in responding was to ensure that your questions got a thorough analysis.

Condition 1. The source's only applicable requirement is a one-time or ongoing notification, reporting, or record keeping requirement; and

Condition 2. The notification, reporting, or record keeping requirement exists to show that the source's actual emissions are below a certain threshold established by the standard.

Your letter proposes that Condition 2 is a requirement to demonstrate a source is not subject to a particular standard, as opposed to being a requirement of a standard developed under section 111 or 112 of the Clean Air Act (CAA). Your letter also suggests that area sources subject to requirements found in Condition 2 constitute a new category of sources, which you refer to as "nominal sources."

We share your view regarding the nonapplicability of title V sources subject only to a one-time or ongoing notification, reporting, or record keeping requirement which demonstrates the sources are below a certain threshold. Many recently-promulgated rules have such requirements, including subparts Cb, Cc, Ce, Ea, Eb, Ec, JJJ, SSS, VVV, and WWW of part 60 and subparts M, N, O, R, X, and JJ of part 63. By way of example, subpart Ec of part 60 requires owners or operators of combustors that burn only pathological waste, low-level radioactive

waste, and/or chemotherapeutic waste and co-fired combustors, as defined in section 60.51c, to comply only with certain record keeping and reporting requirements set forth in subpart Ec. Those owners and operators are not subject to the other substantive requirements of subpart Ec as long as they comply with the record keeping and reporting requirements set forth as conditions for their exemption. Nor are owners or operators of these sources required to obtain title V operating permits as a matter of federal law, if the only reason they would potentially be subject to title V is these record keeping and reporting requirements. We interpret the Clean Air Act and the regulations at parts 70 and 71 to mean that these sources are "not subject to standards or regulations under section 111" for purposes of title V permitting [see CAA section 502(a) and 40 CFR sections 70.3(a)(2) and 71.3(a)(2)]. Therefore, these sources are not required to apply for title V permits on the basis of their record keeping and reporting requirements as a matter of federal law. However, owners and operators of sources that burn only pathological waste, low-level radioactive waste, and/or chemotherapeutic waste and co-fired combustors that do not comply with the record keeping and reporting requirements necessary to qualify for exemption from the other requirements of the Federal plan would become subject to those other requirements and would have to obtain title V permits. Moreover, if in the future we promulgate regulations subjecting any of these sources to substantive requirements other than these record keeping and reporting requirements, these sources could become subject to title V at that time.

Regarding your nominal source category, we do not see a need for establishment of such a category. The present area source and nonmajor source terms should suffice.

Please keep in mind that the position set forth in this memorandum is intended solely as guidance, does not represent final Agency action, and cannot be relied upon to create any rights enforceable by any party. Should you have other questions concerning this position, please contact me at (919) 541-0886.

cc: John Walke, OGC
Air Program Manager, Regions I - X
Title V Contact, Regions I - X
Title III Contact, Regions I-X